

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 CHARLOTTE DIVISION
4 CIVIL ACTION NO. 3:20-CV-00504-FDW-DSC

5 CPI SECURITY SYSTEMS, INC.,)

)

6 Plaintiff,)

)

7 vs.)

)

8 VIVINT SMART HOME, INC. f/k/a)

Mosaic Acquisitions Corporation;)

9 and LEGACY VIVINT SMART HOME,)

INC. f/k/a Vivint Smart Home,)

10 Inc.,)

)

11 Defendants and)

Counterclaimants.)

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DEPOSITION OF JANET NEWMARK

17

(TAKEN BY PLAINTIFF)

18

TAKEN VIA ZOOM

19

Wednesday, August 25, 2021

20

21

22

23

24

Reported in Stenotype by

25

Erin Ramsey

Transcript produced by computer-aide transcription

1 APPEARANCES

2 ON BEHALF OF PLAINTIFF:

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7 ON BEHALF OF DEFENDANT:

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12 Also Present:

13 David Cooper, Videographer
14
15
16
17
18
19
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21 DEPOSITION OF JANET NEWMARK, a witness called
22 on behalf Plaintiff, before Erin Ramsey, Notary
23 Public, in and for the State of North Carolina, taken
24 via Zoom, on Wednesday, August 25, 2021, commencing at
25 11:04 a.m.

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Job No. CS4771065

1 Q. We had clear days but we're back in the smoke.

2 A. I feel bad for you.

3 Q. Well, thanks. I wish I was in North Carolina.
4 I noted that it looked like maybe you were referring
5 to some notes or documents as you were responding to
6 Mr. Eblen's questions. Do you have any documents or
7 notes with you?

8 A. I do.

9 Q. Can you identify those for me, what you have?

10 A. Can you excuse me?

11 Q. Absolutely take whatever time you need.

12 MR. EBLEN: We'll go off the record. Why
13 don't we take five minutes just in case.

14 THE VIDEOGRAPHER: The time is
15 approximately 11:42:24 a.m., we're now off the record.

16 (A recess was taken.)

17 THE VIDEOGRAPHER: The time is
18 approximately 11:46:49 a.m., we're now on the record.

19 BY MR. STEWARD:

20 Q. Thank you again, Ms. Newmark. And I apologize
21 for the challenges and difficulties you had with
22 Vivint's customer service department, but this lawsuit
23 is about CPI alleging that Vivint and its sales
24 representatives represent or misrepresent to customers
25 that they are CPI or that they're affiliated with CPI

1 in some manner.

2 Did Shane do or say anything to cause you to
3 believe that Vivint and CPI were the same company?

4 MR. EBLEN: I'll object to form. That
5 characterization is part of our lawsuit but we don't
6 need to get into that today. So object to form.

7 A. I will answer that and no, he did not say that
8 they were one and the same company.

9 Q. Right. In fact, Shane clearly identified
10 himself as being there on behalf of Vivint, right?

11 A. Yes, he did.

12 Q. And you understood Shane was competing for your
13 business as a home alarm and automation customer and
14 trying to get you signed up for Vivint, a company that
15 was different than your existing provider, correct?

16 A. Correct.

17 Q. Okay. Did Shane have anything on his person, a
18 hat, a uniform, a shirt, that identified him as being
19 a representative of the company Vivint?

20 A. I don't recall.

21 Q. Okay. Do you recall was he did -- he have a
22 vehicle that was parked within your view that had any
23 markings identified as a Vivint vehicle?

24 A. Not that I saw. He was walking when I --

25 Q. Do you recall if he had a badge that identified

1 him as being a Vivint representative?

2 A. No, I do not.

3 Q. Okay. But in any event nothing he wore or said
4 suggested that he was there on behalf of CPI, correct?

5 A. No.

6 Q. Okay. Now, you had -- you had mentioned that
7 Shane told you that the panel you had with CPI had
8 been developed by Vivint; do you recall that?

9 MR. EBLEN: Objection to form.

10 A. Yes, I recall that.

11 Q. Okay. And do you recall was your panel with
12 CPI a 2GIG panel, that's the number 2 and G-I-G?

13 A. I don't recall.

14 Q. Okay. Do you still have that panel?

15 A. No, I do not.

16 Q. Okay. Do you have any reason to believe that
17 Shane's representation regarding Vivint's development
18 of the control panel you had with CPI was false?

19 A. Well, I don't know. I didn't have any reason
20 to not believe it. We were just taking his word for
21 it. But yeah, we didn't research it or anything but
22 we just took his word for it.

23 Q. I'm going to share my screen with you a second.
24 If I've done this correctly there is a photographic
25 image of a panel.

1 suite of equipment; is that fair?

2 A. Yes.

3 MR. EBLEN: Objection.

4 Q. And did you -- do you have the Vivint app on
5 your phone? If you can see that where --

6 A. Yes.

7 Q. Where it pulls up the cameras where you can
8 view from your home; do you have that feature?

9 A. Yes.

10 Q. Is that a feature that you were attracted to
11 when you made the decision to go with Vivint?

12 A. Yes.

13 Q. And you would agree with me that the Vivint
14 suite of equipment you ordered is fair superior to the
15 equipment that was being provided by CPI, right?

16 MR. EBLEN: Object to form.

17 A. We did like it better. It had a few things
18 that we did like better.

19 Q. And did you get the smart exterior high
20 definition cameras?

21 A. Yes.

22 Q. And you would agree with me that that provided
23 a far superior quality image than the CPI camera you
24 had?

25 MR. EBLEN: Object to form.

1 A. Yes.

2 Q. Okay. Do you recall calling CPI to cancel your
3 CPI contract?

4 A. I don't specifically remember if I called or
5 e-mailed but I believe I did call.

6 Q. Okay. And do you recall telling CPI, and these
7 are your words which I quite liked, that their cameras
8 sucked, the quality sucked; do you recall using those
9 words?

10 MR. EBLEN: Object to form.

11 A. No, I don't, but that sounds like me.

12 Q. Okay. And is it your opinion that the CPI
13 cameras sucked?

14 A. Yes, it is my opinion.

15 Q. Right. And you used somewhat less colorful
16 word you also said they're just horrible. Do you
17 recall telling CPI that its cameras were just
18 horrible?

19 A. No, I don't remember saying that but I may
20 have.

21 Q. Okay. Do you recall telling -- well,
22 complaining to CPI that their doorbell camera -- I
23 know this is an exaggeration but you said it sends
24 you, like, 485 billion texts and e-mails over one
25 night. That if a gnat flies by you receive a text and